

**MINUTES
of the
EIGHTH MEETING
of the
CRIMINAL JUSTICE REFORM SUBCOMMITTEE
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**September 24, 2014
State Capitol, Room 321
Santa Fe**

The eighth meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee was called to order by Representative Jane E. Powdrell-Culbert on September 24, 2014 in Room 321 of the State Capitol.

Present

Rep. Antonio "Moe" Maestas, Co-Chair
Rep. Gail Chasey
Rep. Zachary J. Cook
Sen. Cisco McSorley
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert

Absent

Sen. Lisa A. Torracco, Co-Chair
Sen. Sander Rue

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS
Monica Ewing, Staff Attorney, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts are in the meeting file and are posted at www.nmlegis.gov.

Wednesday, September 24

Crime Victims' Perspectives on the Criminal Justice System

The following panelists introduced themselves:

- Lisa Weisenfeld, Policy Coordinator, New Mexico Coalition Against Domestic Violence;
- Joan Shirley, New Mexico Resource Center for Victims of Violent Death;
- Camille Aragon, Domestic Violence Survivor;

- Ben Lewinger, State Executive Director, Mothers Against Drunk Driving (MADD);
- Christina Dominguez, Crossroads for Women;
- Rachal Gonzales, Survivor of Sexual Assault; and
- Leona Woelk, M.A., Associate Scientist II, Prevention Research Center, University of New Mexico.

Ms. Shirley told members of the CJRS that her son was killed in 1999. She stated that she is concerned about crimes not being charged appropriately because of constraints on the criminal justice system, including time constraints; the pressure of large caseloads; and prison overcrowding. Ms. Shirley urged the CJRS to consider measures to ensure that cases are charged and prosecuted appropriately.

Ms. Aragon described the difficulty that she has had with the criminal justice system, particularly with regard to a domestic violence situation that she is experiencing. She told subcommittee members that she is in the process of seeking a divorce from her physically abusive husband. She said that her husband is a police officer in Santa Fe, and she has tried to report past instances of domestic violence committed by her husband to the Santa Fe Police Department, but she has had difficulty getting appropriate follow-up.

Mr. Lewinger told the CJRS that there have been 132 fatalities and more than 1,400 injuries due to substance-impaired drivers in New Mexico. Mr. Lewinger urged the CJRS to recognize driving while intoxicated (DWI) as a violent crime. He indicated that there is a lot of re-victimization because of the prevalence of DWI in New Mexico. Finally, he appealed to the CJRS to consider the victim and not lose sight of the victim's perspective when crafting or amending criminal law.

Ms. Dominguez discussed her experience with domestic violence, witnessing abuse when she was a child. She stated that she is grateful to Crossroads for Women for the support and positive influence that the organization has had on her life. Ms. Dominguez stressed to the CJRS that additional programs and services are needed for domestic violence survivors, and for persons who have committed domestic violence, to break the cycle of domestic violence.

Ms. Gonzales told the CJRS that she was raped as a child and that she was not notified by the court or the district attorney's office of a recent parole hearing for her rapist. She indicated that this type of notice is required by law. Ms. Gonzales told members of the CJRS that she would like the subcommittee to consider a bill that would make permanent protective orders available for victims of sexual assault. A member of the CJRS suggested that a system of automated calls to crime victims should be established to ensure that victims receive the notices required by law.

Ms. Woelk stated that, in 2012, 92 percent of victims who sought help at the Rape Crisis Center of Central New Mexico stated that they knew their abusers. She stated that sexual violence has complex root causes, including depression, poverty and gender inequality. Ms.

Woelk stated that effective domestic violence prevention programs should take a comprehensive approach and should engage the entire community. In addition, she indicated that such programs should engage men and encourage them to confront attitudes about sexual violence. Ms. Woelk stated that effective programs require evaluation, training and technical assistance to improve outcomes. Finally, Ms. Woelk indicated that home visitations provided in programs such as Nurse-Family Partnership have proven to be a strong protective factor against sexual violence.

A subcommittee member suggested that when a police officer is accused of a crime, perhaps the case should be prosecuted by an entity other than the local district attorney's office, such as the attorney general. Another member of the CJRS suggested that when a victim encounters difficulty with reporting or obtaining appropriate follow-up concerning alleged crimes involving a police officer, perhaps an alternative would be to contact another law enforcement agency, such as the county sheriff, rather than the city police department. Members of the CJRS expressed support for legislative proposals that would focus time and attention on the prevention of domestic violence and substance-impaired driving.

A member of the CJRS inquired whether there are other states that allow for a permanent protective order in sexual assault cases. Ms. Gonzales responded that North Carolina does and that the law has been in place for two years. Juliana Koob, representing the New Mexico Coalition of Sexual Assault Programs, stated that in many other states, a permanent protective order is provided for in those states' family violence protection acts.

A member of the CJRS asked Mr. Lewinger whether there are any specific changes that MADD would like to see in statute. Mr. Lewinger responded that one proposal is to close loopholes in the mandatory use of interlock devices. Additionally, Mr. Lewinger would like to see safeguards that prevent cases from being pleaded down to lower offenses. Mr. Lewinger indicated that MADD supports mandatory intensive treatment programs such as DWI courts and drug courts.

One member of the CJRS stated that victims' advocates are employees of the district attorney's office. The member suggested that maybe this should be changed. Another member of the CJRS mentioned the Crimes Against Household Members Act and suggested that there is a problem with penalty progression for the crime of battery. The member also questioned whether a permanent protective order is unconstitutional.

Criminal Justice Legislative Proposals — Legislative Finance Committee

Charles Sallee, deputy director for program evaluation, Legislative Finance Committee, presented 10 proposals to improve the cost-effectiveness of incarceration and increase public safety through community offender management. The specific proposals are listed on a handout distributed by Mr. Sallee, which can be viewed on the CJRS web page at www.nmlegis.gov.

One member of the CJRS inquired about a proposal to require presentencing diagnostic evaluations in county jails or communities where sentencing decisions will be made, rather than

in prisons operated by the Corrections Department (NMCD). Specifically, the member wondered whether the expertise exists in the county jails to conduct these types of diagnostic evaluations. Mr. Sallee indicated that there is already a team that travels to each county facility to conduct evaluations, and this team is funded by the Department of Health.

Members of the CJRS discussed:

- the possibility of a pilot program within the abuse and neglect system that would utilize parents who have successfully completed treatment programs in the abuse and neglect system to serve as mentors to other parents involved in the system;
- the limited availability of the Nurse-Family Partnership program;
- data suggesting that the domestic violence perpetrator program is ineffective;
- making inmates eligible for earned meritorious deductions during the time that they are incarcerated before conviction;
- whether reductions in the use of in-house parole could be achieved through an administrative rather than statutory change; and
- the need for more community corrections options.

One member of the CJRS asked whether there are plans to dedicate more funding to halfway houses. Mr. Sallee responded that the NMCD requested an additional \$800,000 for halfway houses in its most recent budget request. Mr. Sallee added that the NMCD ran a deficit last year and had to ask for supplemental funding. He added that the NMCD will likely be asking for more funding this year.

Tony Ortiz, director, New Mexico Sentencing Commission (NMSC), stated that, for the second year in a row, the NMSC is predicting rapid growth in the female prison population. On the other hand, the male prison population has been stable for the past six to seven years. A member of the CJRS asked for information on the use of in-house parole in the female prison population. Mr. Sallee indicated that, as to the general prison population, approximately 78 percent of inmates are released by their scheduled release date. He added that a significant portion of inmates on in-house parole have refused to participate in the parole process.

A subcommittee member asked about the funding mechanism for the New Mexico Women's Correctional Facility (women's prison). Mr. Sallee indicated that the NMCD pays a per day fee to private prisons, and the women's prison is one type of prison for which the NMCD is allowed to procure directly. The subcommittee member stated that the NMCD's budget should be reduced for each inmate on in-house parole who should have been released.

Report from the Bernalillo County Criminal Justice Review Commission

Arthur Pepin, director, Administrative Office of the Courts, provided a preliminary report from the Bernalillo County Criminal Justice Review Commission and a handout outlining the criminal justice and jail management initiatives that have been implemented or will be

implemented in Bernalillo County. These handouts can be viewed on the CJRS web page at www.nmlegis.gov.

Mr. Pepin discussed new rules concerning speedy trials and indicated that these rules are necessary to reduce pretrial delays and minimize the time people spend incarcerated prior to trial. He further indicated that housing inmates out-of-county is a practice that needs to be eliminated. He stated that the grand jury process in Bernalillo County has contributed to significant delays and that preliminary hearings should be used more frequently. Mr. Pepin further stated that there is significant overlap between the mental health and criminal justice systems, and Bernalillo County has committed \$1.1 million for supportive housing for people with mental health issues who may otherwise end up in the Bernalillo County Metropolitan Detention Center (MDC). He indicated that a crisis triage center is also needed in the metropolitan area.

Mr. Pepin told members of the CJRS that more funding is needed for public defenders, district attorneys and courts. He stated that the use of pretrial services should be increased and reliance on the bail system should be minimized. Mr. Pepin indicated that the only two countries that use a bail system are the United States and the Philippines.

Approval of Minutes

Members of the CJRS voted unanimously to approve the minutes of the subcommittee's August meeting.

History of Bail Bonds, Jail Overcrowding and Possible Legislation

Gerald Madrid described the role of bail bondsmen in the criminal justice system. He indicated that there is a right to bail in the Constitution of New Mexico and the United States Constitution. He indicated that there is a conflict between the bail system and the government-run pretrial services program. Mr. Madrid indicated that the pretrial services program was started in the 1980s in an effort to address indigent defendants and reduce overcrowding. Mr. Madrid discussed the problems that he perceives with the pretrial services system.

John Madrid indicated that the bail bond system has resulted in a 99 percent appearance rate in court by criminal defendants. He echoed the concerns raised by Gerald Madrid about the pretrial services system.

Henry Martinez discussed the license that bail bondsmen are required to obtain and the continuing education requirements for licensure in the profession. He indicated that the bail bonds industry is regulated by the Office of Superintendent of Insurance.

Gerald Madrid discussed the difficulty that inmates have had with the phone system in the MDC. A member of the CJRS suggested mandating free-access phone calls for inmates in county jails. John Madrid added that bail bond amounts should be made consistent throughout the state.

A member of the CJRS stated that there needs to be an appropriate balance between the use of bail bonds and the use of pretrial services. The member stated that pretrial services are expensive and the bail system is a valuable tool.

Criminal Justice Legislative Proposals — Office of the Public Defender

Jorge Alvarado, chief public defender, provided the CJRS with a packet of specific legislative proposals. These proposals can be viewed on the CJRS web page at www.nmlegis.gov.

Mr. Alvarado stated that the legislative proposals have been sent to Henry Valdez, director, Administrative Office of the District Attorneys, and that representatives from the Public Defender Department are meeting with representatives from the Second Judicial District Attorney's Office to discuss the proposals and try to find common ground. A member of the CJRS indicated that the subcommittee may be particularly interested in proposals that the district attorneys can also support.

Several members of the CJRS noted that expungement was not included in the packet of proposals, and they expressed support for some form of expungement, noting that 45 states already have some provisions allowing for expungement. One member of the CJRS pointed out that allowing persons with criminal convictions to seek expungement may reduce recidivism.

Public Comment

Bennett Baur, deputy chief public defender, stated that he disagrees with statements made about the utility of bail bonds and the notion that inmates do not have adequate phone access to bail bond companies. Mr. Baur stated that cash bonds should be phased out and that pretrial services programs should be expanded.

Rikki-Lee Chavez, representing the New Mexico Criminal Defense Lawyers Association, expressed support for eliminating mandatory minimum sentences.

Margarita Sanchez expressed concerns about the lack of efforts to slow prison growth and the lack of programming provided in prisons and detention facilities.

Adjournment

There being no further business before the subcommittee, the eighth meeting of the CJRS adjourned at 4:52 p.m.